MOTION FILED OCT 31 1950

IN THE

Supreme Court of the United States

OCTOBER TERM, 1950.

No. 165.

DEAUVILLE ASSOCIATES, INC., *Petitioner,*

v.

MURRELL, ET AL., *Respondents.*

MOTION FOR LEAVE TO FILE AND PETITION FOR REHEARING ON APPLICATION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

GINSBURG AND LEVENTHAL,
DAVID GINSBURG,
914 Ring Building,
Washington 6, D. C.

SAMUEL J. KANNER,
213 Shoreland Building,
Miami 32, Florida.

SAMUEL H. RUBIN,
2315 Cadillac Tower,
Detroit, Michigan.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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Motion for Leave to File.

The petition for rehearing, set forth below, was not filed within the time limitations of Rule 33 because of the absence in Europe on urgent business of Washington counsel for Petitioner and because of unforeseeable transportation difficulties which prevented his timely return. For these reasons, and because this case (No. 165) and the Lojoy case (No. 383) are related, it is respectfully requested that the motion for leave to file be granted; if the Court grants the petition in the Lojoy case (Filed October 25, 1950) it will wish to reconsider its position in this case.

Petition for Rehearing on Application for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

The petition for certiorari presented the fundamental question whether petitioner had been denied its day in court when the lower court refused to permit petitioner-intervenor to present objections to any decrees entered after the date of its application to intervene, and even after the date of the district court's erroneous denial of the intervention application, but before the circuit court of appeals reversed the error and granted the application to intervene.

If petitioner is not to be given its day in court—as to decrees entered between January 1948 and April 4, 1949—as an intervenor, then it must be permitted to ignore any such decrees and must have full freedom to question them on the merits in other proceedings without being bound by its status in this proceeding. The lower court has denied petitioner that avenue in court, and review of that ruling is sought in *Deauville Associates, Inc.* v. *Lojoy*, No. 383, petition filed October 25, 1950.

Petitioner suggests that the action in No. 165 be reconsidered and that this case be reviewed at the same time as the Lojoy case (No. 383). This Court can thus consider at one time the two avenues sought by petitioner for its day in court, and determine which provides a more orderly administration of justice.

It is respectfully submitted that this petition for rehearing should be granted and that the petition for a writ of certiorari should be granted.

Certificate of Counsel.

It is hereby certified that the above petition for rehearing is presented in good faith and not filed for the purpose of delay. The critical new fact is that the petition in the Lojoy case (No. 383), recently filed, was not before the Court at the time that the petition in this case was under initial consideration.

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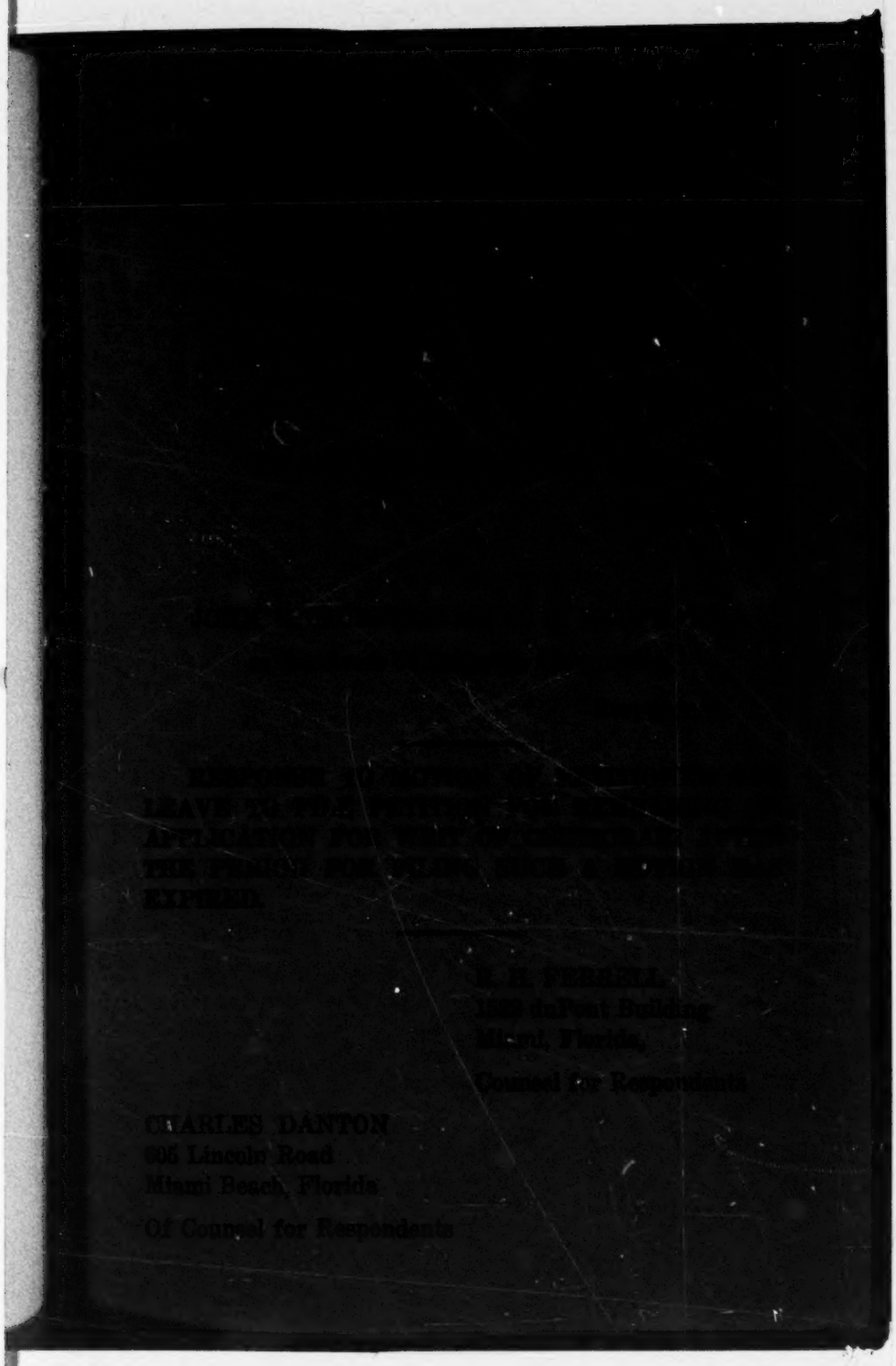

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1950

No. 165

DEAUVILLE ASSOCIATES, INC.,

Petitioner,

vs.

JOHN M. MURRELL and D. H. REDFEARN,
as Receivers of Deauville Corporation,

Respondents.

RESPONSE TO MOTION OF PETITIONER FOR LEAVE TO FILE PETITION FOR REHEARING ON APPLICATION FOR WRIT OF CERTIORARI AFTER THE PERIOD FOR FILING SUCH A MOTION HAS EXPIRED.

Petitioner has filed its motion for permission to file a petition for a rehearing on the order denying its application for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit. The motion was filed subsequent to the 15 day period provided for in rule

33 of this court in which a petition for rehearing may be filed with the clerk. The reason advanced in the motion for such extra-ordinary relief was "the absence in Europe on urgent business of Washington counsel for Petitioner and because of unforeseeable transportation difficulties which prevented his timely return".

REASONS WHY SAID MOTION SHOULD NOT BE GRANTED

1.

Said motion shows that it is filed by Ginsburg and Leventhal by David Ginsburg of 914 Ring Building, Washington 6, D. C. The original petition for writ of certiorari was signed by Harold Leventhal, of the same address, and by Samuel J. Kanner, of Miami, Florida, and Samuel H. Rubin, of Detroit, Michigan.

The motion does not reveal which one of the Washington counsel was absent in Europe on urgent business and detained there by unforeseeable transportation difficulties. It is to be assumed that the Washington counsel referred to was Harold Leventhal, inasmuch as the motion above referred to is signed by Ginsburg and Leventhal, by David Ginsburg. The result is that David Ginsburg, the partner of Harold Leventhal, was in Washington and not in Europe at the time of the running of the period in which a petition for rehearing could have been filed. Therefore, the ground for the motion fails.

The motion is also without merit, because Samuel J. Kanner, of 213 Shoreland Building, Miami, Florida, was one of the attorneys for the petitioner and was available

and in the jurisdiction of the court during the period in which a petition for rehearing could have been filed. The same is true of Samuel H. Rubin, of 2315 Cadillac Tower, Detroit, Michigan, one of the attorneys for petitioner.

2.

The time for filing a petition for rehearing must end at some time and that time is determined by rule 33 of this court and limited to 15 days after the judgment or decision of the court. That 15 day period had expired prior to the filing of the above motion. Because of this fact the following statement from the case of MABSON v. CHRIST, 96 Fla. 756, 119 So. 131, 132 is applicable:

> "It has been well said that there must be some point in every court proceeding when the cause is finally disposed of, its thread cut, and the parties out of court, unless brought in again by some new process served upon them. The public welfare demands that there shall be some definite end to litigation — a point sometime, somewhere, when every case is terminated. We cannot afford to return to the interminable and outrageous practice similar to that depicted in Dickens' case of Jarndyce v. Jarndyce. Especially is this true where, as with us, a court of equity has no stated terms, but is regarded as always open. This point of finality is reached with us, under both the statute and rule 45, 20 days after final decree, when the final decree is based upon decree pro confesso, and, under the statute and rule 90, when the time for rehearing has expired, as to decrees in general."

3.

This point of finality was reached in the present case at the expiration of the 15 days provided for under rule 33 of this court, and this court then lost jurisdiction of this case.

R. SIMPSON & CO. INC., Petitioner v. COMMISSIONER OF INTERNAL REVENUE, 321 U. S. 225, 230, 88 L. ed. 688.

For these reasons respondents respectfully request the court to deny said motion.

R. H. FERRELL
1522 duPont Building
Miami, Florida,

Counsel for Respondents